

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. <u>CR-17-239-M</u>
)	
JERRY DRAKE VARNELL,)	
)	
Defendant.)	

**RESPONSE TO MOTION FOR LEAVE TO FILE
RULE 12.2(b) NOTICE OUT OF TIME**

Undersigned counsel for the government has spoken with Marna Franklin, attorney for Mr. Varnell, regarding the Defendant's motion for leave to file Rule 12.2(b) notice out of time. (Doc. 149). Defense counsel has not yet provided the government with a copy of Dr. Roberson's report(s) or the materials Dr. Roberson used to come to the opinions contained in the report(s). Having not seen the report(s), the government cannot yet concede or contest their relevance or admissibility. However, at a minimum, the government anticipates consulting another expert to review Dr. Roberson's report(s). This case is set on the July 2018 trial docket. If this Court grants the Defendant leave to file Rule 12.2(b) notice this close to trial and ultimately finds the report(s) and testimony to be relevant and admissible, it would unfairly prejudice the government. To remedy this, Ms. Franklin has assured

undersigned counsel that if the Court grants the Defendant leave to file Rule 12.2(b) notice, the Defendant will join the government in moving this Court to continue the trial. Based on this assurance from Ms. Franklin, the government **DOES NOT OBJECT** to the Defendant's motion for leave to file Rule 12.2(b) notice out of time.

Respectfully submitted,

ROBERT J. TROESTER
Acting United States Attorney

s/Mark R. Stoneman
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Certificate of Service

This is to certify that on June 11, 2018, I electronically transmitted the attached document to the Clerk of Court using the CM/ECF System for filing and transmittal of a Notice of Docket Activity to the following CM/ECF registrant: Marna Franklin, Laura Deskin, and Vicki Behenna, attorneys for Mr. Varnell.

s/Mark R. Stoneman
Assistant U.S. Attorney